

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARKEVIS L. STANFORD,	§	
	§	No. 112, 2011
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 1004018513
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: April 11, 2012

Decided: May 1, 2012

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 1st day of May 2012, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Markevis Stanford, the defendant-below (“Stanford”), appeals from his conviction for weapon possession charges after a bench trial in the Superior Court. On appeal, Stanford claims that the Superior Court erred in denying his motion to suppress a handgun he threw away during a police chase, because the police did not have “reasonable suspicion” to justify stopping Stanford. We conclude that the police did have reasonable suspicion, and affirm.

2. On April 23, 2010, Wilmington Police Officers Thomas Oliver (“Oliver”) and Michael Hayman (“Hayman”) were on routine patrol when they

noticed Stanford standing on a street corner in the Southbridge area of Wilmington, which was considered a “high crime” and a “high drug” area. The officers drove toward Stanford in their marked patrol car, but they did not activate the car’s emergency lights. Stanford noticed the police car approaching, and began looking around. Officer Oliver, who was driving, stopped the car near Stanford, and Officer Hayman, Oliver’s passenger, began to open his door. Stanford immediately dropped his cell phone and a drink that he was holding, and began to run. Officer Hayman chased Stanford on foot and ordered him to stop, but Stanford kept running. During the chase, Officer Hayman noticed that Stanford was running awkwardly, with his right hand on his waistband. Hayman also saw Stanford throw a black object, later determined to be a handgun, to the ground. Stanford was eventually arrested by Officer Hayman, and was charged with Possession of a Deadly Weapon by a Person Prohibited, Possession of a Weapon in a School Zone, Carrying a Concealed Deadly Weapon, and Resisting Arrest.

3. Before trial, Stanford moved to suppress the handgun as evidence, claiming that the police stop violated his rights under the United States and the Delaware Constitutions, because the police officers did not have reasonable suspicion to justify stopping him. On October 22, 2010, after a hearing, the Superior Court orally denied Stanford’s motion to suppress, holding that the police officers had “reasonable cause” to approach Stanford under the Delaware loitering

statute. The Superior Court also found that the “stop”—for constitutional purposes—occurred *after* Stanford had begun to flee. The police officers had reasonable suspicion to order Stanford to stop when they did, the court held, because they observed Stanford drop his cell phone and flee upon the officers’ arrival in a high crime area. After a bench trial, Stanford was convicted of Possession of a Deadly Weapon by a Person Prohibited and Carrying a Concealed Deadly Weapon. This appeal followed.

4. On appeal, Stanford argues that the Superior Court should have suppressed the gun that he threw away while running, because the officers did not have reasonable suspicion to stop Stanford when they first approached him on the street corner. We review the denial of a motion to suppress evidence for abuse of discretion.¹ To the extent the trial judge's decision rests on factual findings, we review those findings for abuse of discretion.² We review the trial court’s legal conclusions *de novo*.³

5. Where the police conduct a “stop” of a person, that qualifies as a “seizure” of that person under both the Fourth Amendment of the United States

¹ *Woody v. State*, 765 A.2d 1257, 1261 (Del. 2001).

² *Lopez-Vazquez v. State*, 956 A.2d 1280, 1285 (Del. 2008).

³ *Id.*

Constitution, and the Delaware Constitution.⁴ The question presented on this appeal is: when precisely, as a matter of constitutional law, did the “stop” occur? For federal constitutional purposes, a “stop” occurs at the point a reasonable person would believe that he was not free to leave, either because the police exert some physical force or because the person submits to the officers’ show of authority.⁵ Under the Delaware Constitution, a “stop” occurs when, under the totality of the circumstances, the police officers’ actions would cause a reasonable person to believe that he was not free to ignore the police.⁶ In either case, the police must have reasonable suspicion to make the “stop.”⁷ Reasonable suspicion is defined as the “officer’s ability to ‘point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion.’”⁸

⁴ See *Terry v. Ohio*, 392 U.S. 1, 16, 19 (1968) (rejecting the notion that “the Fourth Amendment does not come into play . . . if the officers stop short of something called a ‘technical arrest’ or a ‘full-blown search,’” and holding that “whenever a police officer accosts an individual and restrains his freedom to walk away, he has ‘seized’ that person” under the Fourth Amendment); *Jones v. State*, 745 A.2d 856, 861 (Del. 1999).

⁵ *Williams v. State*, 962 A.2d 210, 215 (Del. 2008) (“The [United States Supreme] Court clarified that a seizure requires more than a mere assertion of authority, even if it would cause a reasonable person to believe that he or she was not free to leave. Instead, there must be some physical force or *submission* to the assertion of authority.”) (italics in original) (citing *California v. Hodari D.*, 499 U.S. 621, 626 (1991)).

⁶ *Williams*, 962 A.2d at 215 (citing *Michigan v. Chesternut*, 486 U.S. 567 (1988)).

⁷ *Lopez-Vazquez v. State*, 956 A.2d 1280, 1286-87 (Del. 2008).

⁸ *Coleman v. State*, 562 A.2d 1171, 1174 (Del. 1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)).

6. Stanford argues that the stop occurred at the moment the officers parked their police car near him. At that point, (Stanford claims) the police officers did not have a reason to suspect that Stanford was involved in criminal activity “or [was] otherwise in need of police assistance.” Therefore, Stanford asserts, his arrest was constitutionally defective, and that the fruits of the defective stop (the handgun) leading to the arrest should have been suppressed. Stanford’s argument lacks merit. Were his view to prevail, a constitutional “stop” would occur whenever a police car merely parks near a person in a public area, if the circumstances suggest that the police wanted to speak to that person. That view is untenable. Police officers are constitutionally permitted to walk up to, and ask questions of, a person on a public street.⁹ In this case, a stop did not occur merely because the officers parked near Stanford. Moreover, the police had not activated the patrol car’s emergency lights or otherwise suggested to Stanford that he was not free to walk away from them.¹⁰ Rather, and as the Superior Court correctly determined, the stop occurred when Officer Hayman, while chasing Stanford, demanded that he stop. At that point, because Stanford had abandoned his

⁹ *Williams*, 962 A.2d at 215.

¹⁰ *Id.* at 216 (holding that no “seizure” occurred when the police officer parked his patrol car ten feet behind the defendant, activated his strobe—not emergency—lights, and approached the defendant to ask him his name and date of birth).

personal belongings and fled in a high crime area, the police had a reasonable basis to suspect he was involved in a crime.

7. The facts of this case closely resemble those in *Woody v. State*.¹¹ There, this Court held that a defendant who was approached by police officers was not “stopped” until a police officer ordered him to stop after he fled from them in a high crime area.¹² Here, before the officers could even walk up to Stanford, he had dropped his cell phone and his drink, and had begun to flee. That Stanford engaged in this behavior in a high crime area further supports a finding of “reasonable suspicion.”¹³ Therefore, Stanford’s claim fails.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹¹ 765 A.2d 1257 (Del. 2001).

¹² *Id.* at 1264-65 (“Here . . . Woody fled before any of the officers attempted to effectuate a detention.”).

¹³ *Id.* at 1265 (holding that unprovoked flight and the defendant’s location in a high crime area are “relevant contextual consideration[s]” supporting a reasonable suspicion determination).